

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NATHAN RICHARD BOYD,

Defendant-Appellant.

UNPUBLISHED

September 18, 2003

No. 241309

Jackson Circuit Court

LC No. 01-006215-FH

Before: Sawyer, P.J., and Hoekstra and Murray, JJ.

PER CURIAM.

Defendant was convicted by a jury of assault with a dangerous weapon, MCL 750.82, aggravated assault, MCL 750.81a, resisting and obstructing arrest, MCL 750.479, and disorderly conduct, MCL 750.161(1)(e). He was sentenced to twelve days in jail for the disorderly conduct conviction and to sixty days in jail for each of the other three convictions, and was ordered to successfully complete the SAI boot camp upon completion of his jail time. He appeals as of right. We affirm.

Defendant's sole argument on appeal is that the trial court denied defendant a fair trial when it erroneously admitted photographs of the two victims' wounds into evidence, which photographs were highly inflammatory and were more prejudicial than probative, and that this error was not harmless. We disagree.

This Court reviews a trial court's decision to admit a photograph into evidence for an abuse of discretion. *People v Ho*, 231 Mich App 178, 187-188; 585 NW2d 357 (1998). An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say that there was no justification or excuse for the ruling made, *People v Snider*, 239 Mich App 393, 419; 608 NW2d 502 (2000), or the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias, *People v Hine*, 467 Mich 242, 250; 650 NW2d 659 (2002).

MRE 402 provides that all relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of Michigan, the Michigan Rules of Evidence, or other rules adopted by the Supreme Court, and that evidence which is not relevant is not admissible. MRE 401 defines "relevant evidence" as evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. MRE 403 provides

that, although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

In the present case, we find that the challenged photographs were clearly relevant. Defendant was charged with two counts of felonious assault. In order to convict defendant of this crime the prosecution was required to prove beyond a reasonable doubt the following elements: (1) an assault, (2) with a dangerous weapon, and (3) with intent to injure or place a victim in reasonable fear or apprehension of an immediate battery. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). Under the felonious assault statute, MCL 750.82, objects not specifically included as dangerous may be deemed dangerous within the statute's meaning if they are used in a dangerous manner. *People v Buford*, 69 Mich App 27, 30; 244 NW2d 351 (1976). The photographs depicting the type and extent of Lutz' and Bullinger's injuries, tending as they did to make the existence and use by defendant of a bar glass as a weapon against Lutz and Bullinger more or less likely than it would have been without the photographs, were, thus, relevant.

Moreover, we further find that the probative value of the photographs was not substantially outweighed by the danger of unfair prejudice. With regard to this question, our Supreme Court, in *People v Mills*, 450 Mich 61, 77; 537 NW2d 909 (1995), modified on other grounds 450 Mich 1212; 539 NW2d 504 (1995), quoted the following from *People v Eddington*, 387 Mich 551, 562-563; 198 NW2d 297 (1972):

“Photographs that are merely calculated to arouse the sympathies or prejudices of the jury are properly excluded, particularly if they are not substantially necessary or instructive to show material facts or conditions. If photographs which disclose the gruesome aspects of an accident or a crime are not pertinent, relevant, competent, or material on any issue in the case and serve the purpose solely of inflaming the minds of the jurors and prejudicing them against the accused, they should not be admitted in evidence. However, if photographs are otherwise admissible for a proper purpose, they are not rendered inadmissible merely because they bring vividly to the jurors the details of a gruesome or shocking accident or crime, even though they may tend to arouse the passion or prejudice of the jurors. Generally, also, the fact that a photograph is more effective than an oral description, and to the extent calculated to excite passion and prejudice, does not render it inadmissible in evidence.” [Quoting 29 Am Jur 2d, Evidence, § 787, pp 860-861.]

In the case presently before this Court, defendant, in his opening argument, and indeed throughout the trial, asserted that, although he may have had a glass in his hand at the time he struck Bullinger, he hit Bullinger with his hand or knuckles only, rather than with the glass itself. Moreover, defense witnesses further asserted that he had nothing in his hand when he struck Lutz. Under the circumstances, given that the prosecution was required to prove beyond a reasonable doubt that a dangerous weapon was used, the photographs, which by showing the extent of the victims' injuries tended to suggest that a weapon was used as opposed to a bare hand, were not merely marginally probative. Further, there was little or no danger that the jury would give the challenged photographs undue or preemptive weight because they were simply

not photographs such as would inflame the jury's passions to a degree that the jury would convict defendant on that basis, showing as they did the relatively minor injuries inflicted on the victims by defendant without a lot of blood or gore. Moreover, because the challenged pictures did not inflame the jury's passion, because "[p]hotographs are not excludable simply because a witness can orally testify about the information contained in the photographs," and because a party may use photographs to corroborate a witness' testimony, the trial court did not abuse its discretion in allowing the prosecutor to introduce this evidence.

Affirmed.

/s/ David H. Sawyer

/s/ Joel P. Hoekstra

/s/ Christopher M. Murray